

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

THERON JOHNNY MAXTON,
Plaintiff

v.

UNITED STATES,
Defendant

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CIVIL NO. 1:13-CV-1893

A M E N D E D O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On August 16, 2013, we adopted a Report and Recommendation issued by Magistrate Judge Blewitt. Since that time, it has been called to our attention that some cases relied on by Judge Blewitt have been overturned by Millbrook v. United States. ___ U.S. ___, 133 S. Ct. 1441, 1444, 185 L. Ed. 2d 531 (2013). For this reason, we are issuing this amended order.

We will reject the portion of the magistrate judge's report which held that to state a claim pursuant to the Federal Tort Claims Act ("FTCA"), Plaintiff must allege that the prison staff committed an intentional tort while conducting a search, seizing evidence, or making an arrest.¹ We will adopt the remaining portions of the magistrate judge's report. Our August 16, 2013 order will remain in effect in all other respects.

¹ In Millbrook, the Supreme Court held that "the waiver effected by the law enforcement proviso extends to acts or omissions of law enforcement officers that arise within the scope of their employment, regardless of whether the officers are engaged in investigative or law enforcement activity, or are executing a search, seizing evidence, or making an arrest." 133 S. Ct. at 1446.

AND NOW, this 27th day of August, 2013, it is ORDERED that:

1. The magistrate judge's report (Doc. 7) is REJECTED in part and ADOPTED in part.
2. The portion of the magistrate judge's report which held that to state a claim pursuant to the FTCA, Plaintiff must allege that the prison officers committed an intentional tort while conducting a search, seizing evidence, or making an arrest, is REJECTED.
3. The magistrate judge's report is ADOPTED in all other respects.
4. The remaining portions of our August 16, 2013 order shall remain in effect.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge